IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 546 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINOD KESHAVRAO KARADE

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR KG SHETH, APP for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/02/2000

ORAL JUDGEMENT

Rule. Mr.K.G.Sheth, learned APP waives service of notice of Rule on behalf of respondent-State.

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#. An application at Ex.152 was submitted by the present petitioner-original accused before the learned

Additional Sessions Judge, Bharuch in Sessions Case No.63 of 1991 whereby he has requested the court below to call the witnesses along with the documents. Said application was rejected by the court below vide order dated 18-10-1999 on the ground that application in question has been submitted by the petitioner-accused at the time of recording further statement as well as on the ground that documents and newspaper is hearsay evidence. Against that, present Criminal Revision Application is preferred.

#. It appears that petitioner has not mentioned anything in the petition regarding the date on which further statement of the petitioner-accused has been recorded by the court. It reflects from the impugned order that application was submitted by the petitioner-accused at the time of recording further statement requesting to issue witness summons and it was rightly requested by the petitioner. Therefore, it was the duty cast upon the court to call for the witness as a witness of petitioner-accused. Instead of doing so, court has rejected the same only on the ground that application has been submitted at the time of recording further statement. At the cost of repetition, I would like to state that application can be submitted at the time of recording further statement and more particularly when specific question has been asked by the court as to whether he wants to examine any witness. In response to that, petitioner-accused submitted an application requesting that he wanted to examine particular witness. But the learned Judge did not allow the same which is absolutely an illegal act on the part of learned Addl. Sessions Judge. Over and above, he has given a finding that the document in question is a hearsay evidence. He could have come to the conclusion after affording proper opportunity to the party concerned. Instead of doing so, he has jumped to a conclusion that it is a hearsay evidence. It is absolutely not a just and proper order. When a Judge of the cadre of Addl. Sessions Judge is passing this type of order, it pains this Court and, therefore, order passed by the Addl. Sessions Judge, Bharuch is required to be set aside.

#. Order dated 18-10-1999 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.63 of 1991 below Ex.152 is hereby quashed and set aside. Rule is made absolute accordingly. Learned Addl. Sessions Judge, Bharuch is hereby directed to issue witness summons as prayed for by the petitioner-accused and examine them according to law.

(R.P.DHOLAKIA,J.)

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